

**U.S. Department of the Interior  
Bureau of Land Management**

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**Decision Record - Memorandum**

**November 2015**

**PREPARING OFFICE**

U.S. Department of the Interior  
Bureau of Land Management  
Worland Field Office





# **Decision Record - Memorandum**

Washakie County-Hazelton Road Mineral Materials testing and development & Access Road Right-of-way

Free Use Permit — WYW165335

ROW —WYW-165341 and WYW-165341-01

## **Decision**

It is my decision to approve the associated Mineral Materials Free Use Permit and Right-of-Way road to access mine operations described as Proposed Action of Environmental Assessment No. DOI-BLM-WY-R010-2015-0040-EA, and to include those measures proposed by Washakie County as described:

### **Phase 1 – Test pits**

Testing would be conducted by digging 2 exploratory trenches with the use of a Case 580M rubber tire backhoe; trenches would be dug 4ft wide by 8ft long to the depth of the deposit or a maximum depth of 12ft. Topsoil would be placed to one side of the trench, and overburden and material would be placed on opposite sides. Trenches would be examined from above ground and samples would be taken from the backhoe bucket or material pile. At no time would anyone enter the trenches, nor would any open trench be left unattended.

After examining the trench and collecting samples, the trench would be immediately backfilled with material and overburden, and topsoil would be replaced and spread before moving on to the next location. The disturbed area would be raked and seeded with a BLM approved seed mix.

The test program would commence upon BLM approval, and testing and reclamation would take no more than 2 days. Washakie County personnel would notify the Worland BLM office at least 48 hours prior to beginning field work.

No construction on the access would be necessary to reach the test pit area.

### **Phase 2 – Development and access**

If the sampling and testing program proves the area has adequate mineral material resources for future road maintenance projects in the area Washakie County would implement phase two Construction would commence on the access road and it would be maintained to a permanent road running surface of 20'. Disturbance would extend to approximately 50' to provide for runoff.

### **Right-of-Way:**

Construction standard for all new access roads:

The new proposed access route would be approximately 1,300', constructed to a 20' running surface with a width of disturbance of 50', and an additional 30' for construction, resulting in 2.423 acres of new disturbance. The proposed new construction would be designed for the anticipated levels of use of truck traffic which would be traveling the road, which includes both light and heavy duty trucks.

The access road is designed to meet the standards of the anticipated traffic flow and seasonal requirements from May through October. The access road would not be constructed using frozen material or during periods when the soil material is saturated or when watershed damage is likely to occur. Vegetative debris would not be placed in or under till embankments.

The road would be crowned, ditched, and surfaced with gravel. One 18” by 60’ culvert would be installed and placed at the intersection of the access road with CR 81. Access roads, surface disturbing activities and maintenance would conform to standards outlined in the BLM and Forest Service publication: Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development, The Gold Book, Fourth Edition (2007) and BLM Manual Section 9113.

The Proposed Action was chosen as being the most environmentally sound alternative while meeting the resource management goals. Terms and Conditions necessary for this action are attached and considered a part of this approval. This action has been analyzed in the referenced EA and found to have no significant impacts, thus an EIS is not required.

### **Authorities:**

NEPA (42 U.S.C. §§ 4321- – 4347), as amended

Federal Land Policy and Management Act (FLPMA) of 1976

Mineral Materials Act of 1947, as amended

Mining and Mineral Policy Act of 1970

### **Mitigation and Monitoring:**

To assure compliance with the approved action, the project will be monitored during regularly scheduled field inspections.

### **Terms / Conditions / Stipulations:**

This authorization will be granted subject to the Terms and Conditions as attached.

### **PLAN CONFORMANCE AND CONSISTENCY**

This plan has been reviewed to determine if the proposed action conforms to the land use plan as required by 43 CFR 1610.5. The proposed action conforms to the Record of Decision and Approved Resource Management Plan for the Worland Field Office, dated September 21, 2015. The decisions in the Worland Resource Management Plan (WRMP) provide general management direction and allocation of uses and resources on the public lands in the area.

<b>GOAL MR:1</b>	<b>Provide opportunities for mineral extraction and energy exploration and development to meet national and local needs, while avoiding or mitigating impacts on other resources.</b>
<b>Objectives:</b>	<b>MR:1.1</b> Provide opportunities to explore for, sell and/or permit, and develop leasable, salable, and locatable mineral resources.  <b>MR:1.2</b> Encourage sound, balanced exploration and development of mineral resources in the planning area.
Record 2030	2,468,896 acres are open to mineral materials disposal.  217,794 acres are closed to mineral materials disposal
Record 2028	Dispose of mineral materials on a case-by-case basis, subject to site-specific analysis and appropriate mitigation prior to approval, in areas open to mineral materials disposal.

This proposal would be within an area generally open to sale of mineral materials, with adequate mitigation measures, and thus it would be in conformance with the land use plan.

## **ALTERNATIVES CONSIDERED**

The Environmental Assessment (EA) for the Project considered two alternatives, No Action and the Proposed Action with Mitigation.

The No Action alternative assessed the effects of not implementing any portion of the proposal. The No Action alternative implies that on-going development and activities would be allowed to continue in the area, but the proposed action would be disallowed. Additional actions would be considered by the BLM on a case-by-case basis.

The Proposed Action alternative assessed and disclosed the projected effects of the applicant's proposal as submitted, with BLM staff specialists input. It was felt that certain mitigation measures were necessary and proper to provide adequate protection of the surface.

## **RATIONALE FOR DECISION**

The Proposed Action was chosen as being an environmentally sound alternative, and is in conformance with the Worland Resource Management Plan. Approval of the alternative, as stated above, will allow Washakie County to continue to conduct gravel mining and aggregate activities as provided for by the Mineral Materials Act of 1947, the Federal Land Policy and Management Act of 1976, and other laws and policies. This decision recognizes that there will be minimal impacts to resources until such time as the site has been successfully reclaimed. Implementation of the mitigation measures stated above will address impacts to resource values identified in the EA.

## PROTEST AND APPEAL OPPORTUNITIES

### Free Use Permit

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (BLM Worland Field Office, 101 S. 23rd St., Worland, WY 82401) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR §3601.80 or a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below.

Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1)the relative harm to the parties if the stay is granted or denied;
- (2)the likelihood of the appellant's success on the merits;
- (3)the likelihood of immediate and irreparable harm if the stay is not granted; and
- (4)whether the public interest favors granting the stay.

### Right-of-way

/s/Michael Phillips	November 16, 2015
Worland Field Office Manager	Date

## **Right-of-Way Terms and Conditions**

In addition to the standard and general Terms and Conditions in the right-of-way grant, the following Specific Terms & Conditions are for the construction, operation, maintenance, and termination of the access road Right-of-Way WYW-165341 and WYW-165341-01

NEPA Number DOI-BLM-WY-R010-2015-0040-EA

### **Erosion Control:**

1. Operators are required to obtain a National Pollution Discharge Elimination System (NPDES) Storm Water Permit from the Wyoming DEQ for any projects that disturb one acre or more. This general construction storm water permit must be obtained from the WDEQ prior to any surface disturbing activities and can be obtained by following direction on the WDEQ website at <http://deq.state.wy.us>. Further information can be obtained by contacting the NPDES coordinator at (307) 775-7570.
2. The operator shall ensure all appropriate measures are taken to control erosion. Upon completion of construction the operator shall initiate the approved Storm Water Discharge Plans on the location.

### **General:**

1. The holder shall permit free and unrestricted public access to and upon the right-of-way for all lawful purposes except for those areas designated as restricted by the BLM or Surface management agencies to protect the public, wildlife, livestock, or facilities constructed within the right-of-way.
2. There is reserved to the authorized officer the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant.

### **Construction:**

1. The operator shall contact the authorized officer a minimum of 5 days prior to beginning any construction activity.
2. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.
3. The holder shall survey and clearly mark the centerline and exterior limits of the right-of-way, including the construction right-of-way, as determined by the authorized officer.
4. Construction sites shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse and pipe.
5. The holder shall ensure equipment has been thoroughly cleaned prior to use on the right-of-way, especially if it has been used in a weed infested area. Only weed free gravel may be used on the right-of-way. The holder shall monitor the right-of-way regularly for the presence of noxious weeds. The holder shall treat any noxious weeds detected in the right-of-way in accordance with BLM policy.

6. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of 4 inches deep, the soil shall be deemed too wet to adequately support construction equipment.
7. Construction activity shall not be conducted using frozen or saturated soil material or during periods when watershed damage or excessive rutting is likely to occur.
8. The holder shall construct, operate, and maintain the facilities, improvements, and structures within this right-of-way in strict conformity with the application/plan of development which was approved and made part of the grant on its effective date. Any relocation, additional construction, or use that is not in accord with the approved plan of development, shall not be initiated without the prior written approval of the authorized officer. A copy of the complete right-of-way grant, including all stipulations and approved plan of development, shall be made available on the right-of-way area during construction, operation, and termination to the authorized officer. Noncompliance with the above will be grounds for an immediate temporary suspension of activities if it constitutes a threat to public health and safety or the environment.
9. Within 30 days of completion, the holder will submit to the authorized officer, as-built drawings and a certification of construction verifying that the facility has been constructed (and tested) in accordance with the design, plans, specifications, and applicable laws and regulations.

Cultural:

1. The holder is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the holder is to immediately stop work that might further disturb such materials, and contact the authorized officer (AO). Within five working days the AO will inform the holder as to:

-whether the material appears eligible for the National Register of Historic Places;

-the mitigation measures the holder will likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and,

-a timeframe for the AO to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the AO that the required mitigation has been completed, the holder will then be allowed to resume construction measures.

Paleontological:

1. The holder is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing paleontological localities, or for collecting vertebrate fossils. If paleontological materials are uncovered during operations, the holder is to immediately stop work that might further disturb such materials, and contact the authorized officer (AO).



2. Within five working days the AO will evaluate the discoveries and take necessary actions to protect or remove the resource. Decisions regarding the appropriate measures to mitigate effects to such resources will be made in consultation with the holder.

Weeds:

1. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods.

Reclamation:

1. All disturbed areas shall be drill seeded. Where drilling is impractical, seed shall be broadcast and the area raked or chained to cover seed. If broadcast seeding is used, the approved seed mix shall be doubled.

All disturbed areas shall be reseeded with the following mixture of all Pure Live Seed

Common	Rate lbs/ac
Bluebunch Wheatgrass	2.2
Idaho Fescue	1.4
Columbia needlegrass	3.4
Spike fescue	1.2
Mountain big sage	0.25
American Vetch	2.6
Total	11.35

Fall seeding shall be completed after September 1, and prior to ground frost. Spring seeding shall be completed after the frost has left the ground and prior to May 15. Seeding shall be repeated if a satisfactory stand is not obtained.

2. Prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities

# **Free Use Permit Terms and Conditions**

## **General**

1. A Reclamation and Weed Plan shall be submitted and approved by the Authorized Officer within 30 days prior to development of the mining pit. The Reclamation Plan shall include measures that will be taken by the operator to minimize visual impacts to the project area. The Reclamation Plan shall adhere to BLM IM WY-2012-032 (as updated).
2. Dust abatement activities shall be utilized as necessary.

## **Soil**

1. All surface disturbances will be restricted to the specific area needed for extraction, processing, and stockpiling of the aggregate materials. All hauling activity, from the material source to the eventual use site, will be restricted to existing roads.
2. Topsoil will be removed and stockpiled prior to collection of useable aggregate materials. Topsoil stockpiles will be shaped and seeded with a BLM approved seed mix to minimize erosion and maintain soil viability for future site reclamation needs. Topsoil and overburden will be stockpiled in as close as possible and to facilitate reclamation of the site. Stockpiles will be stabilized in a manner that will minimize loss of material.
3. Overburden will be removed to the depth necessary for the production of acceptable aggregate material. Overburden will be stockpiled separate from topsoil in previously disturbed areas within the site. Care will be taken to remove only that which is necessary for production of the required quantity of aggregate material.
4. Precautions will be taken in locating spoil piles or material stockpiles to assure that siltation of streams, ponds, drainages, etc., will not occur. Operations will be conducted in such a manner that standing water, which may pose a threat to health, will not accumulate at random within the project area.
5. The aggregate material will be crushed to a size and gradation that is acceptable for its intended purpose. If a crusher is used, it will be set near the edge of the site and material fed into the crusher by earthmoving equipment. Material screened during the crushing operation will be stockpiled adjacent to the source area in previously disturbed locations. Rejected material will also be stockpiled in previously disturbed areas.

## **Hazardous Materials**

1. The use of water, or a chemical palliative, may be required for dust abatement/control at the site. Water will be used in accordance with all applicable State of Wyoming and Federal regulations and approval from the appropriate water rights owner must be obtained if necessary.
2. Hazardous wastes and used oil will be disposed of in accordance with State of Wyoming regulation and will not be stored on location. The operator will take all necessary measures to protect soil, water, or other sensitive resources from fuels, lubricants and hazardous substances.
3. No bulk fuels, lubricants or hazardous substances will be stored on site.

4. Solid waste will be disposed of in accordance with State and Federal regulations.

## **Cultural Resources**

The operator is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during construction, the operator is to immediately stop work that might further disturb such materials, and contact the authorized officer (AO). Within five working days the AO will inform the operator as to:

- whether the materials appear eligible for the National Register of Historic Places;
- the mitigation measures the operator will likely have to undertake before the site can be used (assuming in situ preservation is not necessary); and,
- a timeframe for the AO to complete an expedited review under 36 CFR 800.11 to confirm, through the State Historic Preservation Officer, that the findings of the AO are correct and that mitigation is appropriate. The AO will provide technical and procedural guidelines for the conduct of mitigation. Upon verification from the AO that the required mitigation has been completed, the operator will then be allowed to resume construction measures.

## **Paleontology**

1. The operator is responsible for informing all persons in the area who are associated with this project that they will be subject to prosecution for knowingly disturbing paleontological localities, or for collecting vertebrate fossils. If paleontological materials are uncovered during operations, the operator is to immediately stop work that might further disturb such materials, and contact the authorized officer (AO).
2. Within five (5) working days the AO will evaluate the discoveries and take necessary actions to protect or remove the resource. Decisions regarding the appropriate measures to mitigate effects to such resources will be made in consultation with the operator.

## **Survey Monuments**

The Operator shall protect all survey monuments within the permit area. In the event of obliteration of a monument, the Operator will report the incident in writing to the BLM and the respective installing authority, if known. The Operator shall be responsible for all surveys and costs of reestablishing the survey monuments.

## **Visual Resources**

1. The material site will be maintained in a fashion that will blend with the surrounding topography. VRM goals will be met by shaping all sides of material sites and stockpiles to a slope of 3 horizontal to 1 vertical or flatter (3H:1V).
2. During periods of non-construction, material piles shall be minimized and left in a manner that reflects the natural form of the surrounding area. The excavation activities will be designed to contour to the landscape of the project area.

## Fire

The Operator shall be responsible for the prevention and suppression of fires on public lands caused by its employees, contractors, or subcontractors. During conditions of extreme fire danger, surface use operations may be either limited or suspended in specific areas, or additional measures may be required by the BLM. Notification of a wildfire is to be made to:

1-800-295-9954.

## Reclamation

1. During reclamation the fill material will be pushed back into the cuts and up over the backslopes. The disturbed area will be graded to conform to the surrounding topography. Recontoured slopes should be less steep than 3H:1V where possible. Final grade must provide through-drainage for all disturbed areas. Depressions which trap or pond water are not allowed.
2. The subsoil and topsoil will be distributed evenly over the entire disturbed area and the seedbed prepared by disking/or similar activity to a depth of four to six inches following the contour. The operator will remove any unnecessary culverts from associated roads. The reclamation of drainage crossings is to match the natural gradient with similar width to depth ratios as the natural pre-disturbed drainage.
3. All disturbed areas shall be drill seeded. Where drilling is impractical, seed shall be broadcast and the area raked or chained to cover seed. If broadcast seeding is used, the approved seed mix shall be doubled. All disturbed areas shall be reseeded with the following mixture of all Pure Live Seed.

Common	Rate lbs/ac
Bluebunch Wheatgrass	2.2
Idaho Fescue	1.4
Columbia needlegrass	3.4
Spike fescue	1.2
Mountain big sage	0.25
American Vetch	2.6
Total	11.35

4. The re-vegetation shall consist of species included in the seed mix and/or occurring in the surrounding natural vegetation or as deemed desirable by the BLM or private surface owner in review and approval of the reclamation plan. Livestock palatability and wildlife habitat needs must be given consideration in seed mix formulation. Successful vegetation canopy cover production and species diversity shall approximate the surrounding undisturbed area. Interseeding, secondary seeding, or staggered seeding may be required to accomplish re-vegetation objectives. The seed mixture(s) shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Since seeds are of different sizes and require different planting depths, the Operator shall use the appropriate equipment to ensure that the seed mixture is correctly and uniformly planted over the disturbed area. Seed shall be broadcast if drilling is not possible. When broadcasting the seed, the pounds per acre are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the WYDEQ-LQD and BLM. Evaluation of growth will not be made before completion of the second growing season after seeding.

5. Seeding should be done preferably in the fall after September 15, until the soil is frozen, or conditions prevent effective seeding operations. Seeding may also be done as early as possible the following spring (between spring thaw and April 15) to take advantage of available ground moisture. Seeding shall be repeated until a satisfactory stand is established as determined by the WYDEQ-LQD and BLM. Evaluation of growth will not be made before completion of the second growing season after seeding.

#### Weeds

1. The Operator is responsible for weed control on disturbed areas within the boundaries of the permit. The control methods must be in accordance with guidelines established by the BLM, state and local authorities. Prior approval is required on Federal surface and use of pesticides will be limited to those approved by the BLM.
2. The Operator shall be responsible for total control of all invasive/noxious weed species on any and all project disturbed areas and native areas infested as a direct result of the project. A yearly weed control program shall be incorporated into the reclamation program until native vegetation is well established. The control methods shall be in accordance with guidelines established by BLM, state and local authorities. Prior to the use of pesticides, the Operator shall obtain written approval from the BLM Weed Coordinator and BLM Authorized Officer.
3. The Operator would be responsible for controlling all noxious and undesirable invading plant species in mined and/or reclaimed areas until the revegetation activities have been determined to be successful, and the bond has been released for a given area. If noxious or invasive weeds are encountered, the Big Horn County Weed and Pest shall be contacted by the Operator for control and eradication. Written approval from the Authorized Officer for the use of herbicides must be obtained prior to usage of herbicides.